

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICHARD JOE PRUITT, JR.,

Plaintiff,

v.

Civil Action No. 1:20-CV-228
Judge Klee

FCI MORGANTOWN,
WARDEN GOMEZ, and
MEDICAL STAFF,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 8]

On September 21, 2020, the pro se Plaintiff filed a Complaint alleging violations of his constitutional rights. Compl., ECF No. 1. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloi for initial review. On September 28, 2020, the Magistrate Judge issued a Report and Recommendation ("R&R") recommending that Plaintiff's Complaint be dismissed without prejudice for failure to state a claim upon which relief can be granted, pursuant to the provisions of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

The R&R also informed the parties regarding their right to file specific written objections to the magistrate judge's report and recommendation. Under Local Rule 12 of the Local Rules of Prisoner Litigation Procedure of the Northern District of West Virginia, "[a]ny party may object to a magistrate judge's

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recommended disposition by filing and serving written objections within fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition." LR PL P 12. Therefore, parties had fourteen (14) calendar days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that Plaintiff accepted service of the R&R on October 2, 2020. ECF No. 10. To date, no objections to the R&R have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

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Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 8] and **DISMISSES without prejudice** Plaintiff's complaint [ECF No. 1] for failure to state a claim upon which relief can be granted, pursuant to the provisions of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. Plaintiff's "Motion to Stop Collection of Fees" is **GRANTED**. [ECF No. 12].

The Court **ORDERS** that this action be **DISMISSED WITHOUT PREJUDICE** and **STRICKEN** from the docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Plaintiff via certified mail, return receipt requested.

DATED: September 21, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE